Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (S/B) No.9 of 2004.

Harihar Singh Bisht S/o Sri Pan Singh Bisht,
Resident of Kushum Khera, Haldwani,
District- Nainital.

……. Petitioner

Versus

1. State of Uttaranchal through Secretary,
   Medical Health Department, Dehradun.

2. Director of Medical Ayurvedic and Unani
   Services, Uttaranchal, Dehradun.

…….. Respondents.

Sri D.S. Patni, learned counsel for the petitioner
Sri K.P. Upadhyay, learned Standing Counsel for the respondents

Date: 11th July, 2006.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This writ petition has been filed seeking writ of mandamus directing the respondents to declare the petitioner confirmed in service on the post of Medical Officer from the date of substantive appointment.

2. The petitioner was appointed as Medical Officer Ayurvedic on temporary basis in the existing State of Uttar Pradesh in State Ayurvedic Dispensary Kanalikot District-Bageshwar. He was appointed on 13.05.1981 since then he is continuing. After the U.P. Reorganization Act, 2000 came into force the petitioner continued to serve in existing State of U.P.

3. It has been stated that the petitioner had filed a Writ Petition No. 535 of 2003 (S/B) which was dismissed on 23.12.2003 holding that the petition is devoid of merit. The order passed by this Court in the said writ petition is reproduced as under:-

"Heard Mr. D.S.Patni, learned counsel for the petitioner and learned Chief Standing Counsel for the State.

This writ petition has been filed by the petitioner seeking a writ of mandamus to command the respondents to regularize the services of the petitioner on the post of Medical Officer Ayurvedic with all consequential benefits.

The facts of the case are that the petitioner was appointed in the year 1981 in District Board Hospital, District Almora. On 17.9.1992 the hospital was provincialised and the petitioner continued to work with the same hospital on the same terms and conditions under which he was working. The petitioner is working in the same hospital till date, which stands provincialised. Now it does not belong to Zila Panchayat. Therefore, the petitioner has prayed that now since he is a Government servant, his services are to be regularized under the Regularization of Adhoc Appointment Rules, 2002. The prayer of the petitioner is misconceived. According to the petitioner's case, itself, that he was appointed on temporary basis, the rules providing for regularization of Adhoc appointments can not be made applicable as the petitioner was appointed regularly, but against the temporary post. Therefore, his appointment was made temporary. Thus, the relief prayed for cannot be granted to the petitioner.

In view of the aforesaid facts, petition is devoid of merit and is therefore dismissed. However, it is open for the petitioner to avail any other relief to which he is entitled."

4. From perusal of the aforesaid judgment it appears that provision of Section 75 of the U.P. Reorganisation Act, 2000 was not brought to the notice of the Court by the learned counsel for the petitioner. Section 75 of the said Act reads as under:-

"75. Provisions as to continuance of officers in same post.- (1) Every person who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Uttar Pradesh in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in that successor State.

Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office."

5. The petitioner is continuing in successor State i.e. State of Uttaranchal and shall continue to hold post in the State of Uttaranchal **and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government.**

6. It is not in dispute that the petitioner was initially appointed and petitioner became Government servant, therefore provision of Section 75 of the U.P. Reorganisation Act, 2000 is applicable. By virtue of deeming provision under Section 75 of U.P. Reorganisation Act, 2000 the petitioner is now duly appointed and serving in the State of Uttaranchal. Duly appointed means the appointment of the petitioner made prior to the Reorganisation Act and continued thereafter on the appointed day, stands regularized under the provision. Since the petitioner is appointee of the year 1981 he is entitled to be regularized in view of the rules known as **Uttaranchal (On posts within the purview of the Public Service Commission) Ad-hoc Appointment Regularization Rules 2002**.

7. Therefore, we allow the writ petition with the direction to the respondents to consider the case of the petitioner for regularization under the aforesaid Rules within a period of one month from the date of production of certified copy of this order. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J)**
11.07.2006 **11.07.2006**

P.Singh